

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case (ECF No. 93). The Magistrate Judge recommends that Defendants' motion to stay this action and to compel arbitration should be granted with respect to plaintiff Rede's claim and denied with respect to the claims of the remaining plaintiffs.

Defendants filed objections on the basis that the Magistrate Judge did not consider Defendants' Appendix in support of their Reply brief (ECF No. 95). However, Defendants did not seek leave to file new evidence. A party is not automatically entitled to submit new evidence in support of a motion in a reply brief. *See Spring Indus., Inc. v. Am. Motorists Ins. Co.*, 137 F.R.D. 238, 239 (N.D. Tex. 1991) (Fitzwater, J.) (“[W]here a movant has injected new evidentiary materials in a reply without affording the nonmovant an opportunity for further response, the court still retains the discretion to decline to consider them.”). Accordingly, Defendants' objections are **OVERRULED** and Defendants may seek leave from the Magistrate Judge to file an additional motion or motions to compel.

Plaintiffs submit one objection to the Magistrate Judge's recommendation. The Court finds that Plaintiffs failed to present this objection to the Magistrate Judge. Therefore, this objection is **OVERRULED**. *See Cupit v. Whitley*, 28 F.3d 532, 535 (5th Cir. 1994)(a party is not automatically entitled to present new theories to the district court on an appeal from a Magistrate Judge recommendation).

The Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the Magistrate Judge (ECF No. 93) as the findings and conclusions of the Court.

SO ORDERED on this **17th day of September, 2012**.



Reed O'Connor
UNITED STATES DISTRICT JUDGE